



## DoD Policy for Blended Rates on FAR 31.205-6(p) Compensation Cap

By Michael Steen, CPA, Senior Director at Redstone Government Consulting, Inc.

On October 24, 2014, DDP (Director, Defense Pricing) issued a memorandum, subject "Use of Blended Rates to Implement Multiple Rate Caps" related to the statutory cap in FAR 31.205-6(p). As discussed in a previous newsletter (June 2014, *FAR Interim Rule June 24, 2014*), the multiple rate caps are attributable to a change in the statutory cap which applies to contracts executed on or after June 24, 2014. Thus, a contractor performing "old" contracts signed before June 24, 2014 would be subject to the previous rate cap (\$952,038) and those "new" contracts signed on or after June 24, 2014 subject to the much lower rate cap (\$487,000). To the extent this rate cap would primarily apply to indirect or G&A employees, the multiple rate caps would typically require multiple rates; e.g. a G&A rate for old contracts based upon the higher amount and a lower G&A rate for new contracts.

Although the DDP memorandum does not provide any details, it does open the door for blended rates which would simplify contract administration. As stated by DDP, blended rates would be calculated by each individual contractor as a weighted composite cap amount specific to their contract volume prior to June 24, 2014 and on or after June 24, 2014. Translated, in application to an indirect and/or G&A rate, a composite rate would be developed based upon the relative indirect or G&A allocation base dollars for old contracts and new contracts as a percentage of the fiscal year total. Additionally, DDP states that the contractor's final overhead rate submission (required by FAR 52.216-7(d)) must include auditable substantiation for the calculation of the actual blended rates and that an audit will ensure that only the total allowable compensation is billed to the Government. DDP states that a contractor is not required to use blended rates, in particular that a contractor could use separate rates (one applicable to old contracts; one applicable to new contracts) or the contractor could opt to use the lower cap applicable to all contracts. Although DDP's last option would seem to be one that a contractor would never consider, by implication DDP knows that even the lower cap will affect a relatively small percentage of government contractors.

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It should be noted that blended rates will involve an advance agreement (FAR 31.109); apparently DDP has no problem with the concept of an “advance” agreement after the fact (i.e. for calendar year contractors, the advance agreement applicable to fiscal year 2014 will be after the compensation has been incurred). For anyone trying to determine the details, which will be in the form of DCMA implementation guidance in coordination with DCAA; the concept of blended rates applicable to the statutory cap is nothing new. The initial application (1995) of a statutory cap involved very similar “contracts before” and “contracts after” for which blended rates were an option and there are illustrative calculations in DCAA’s CAM (Contract Audit Manual) Chapter 6, Figure 6-4-3. DCMA’s forthcoming implementation will presumably mirror previous methods for blended rates, but it should also be noted that the blended rates will only apply to DoD contracts (unless civilian agencies or the FAR Councils issue implementing guidance which permits this concept). One other cautionary note, with the June 24, 2014 change to FAR the statutory cap now applies to all contractor employees (previously it only applied to the top five most highly compensated other than for DoD, NASA and Coast Guard for whom the cap had expanded the applicability in 2012).

In summary, if the lower statutory cap applies to a contractor because one or more employee’s 2014 compensation (wages, salary, bonuses, deferred compensation and employer contribution to defined contributions pension plans) exceeds \$487,000, that contractor should consider blended rates assuming the contractor also received a contract after June 24, 2014. If the lower cap simply doesn’t apply or if the contractor has no DoD contracts, the DDP memorandum has no significance.

## DCAA Revises Policies for Billing Oversight and Voucher Testing

*By Darryl Walker, CPA, CFE, CGFM Senior Director at Redstone Government Consulting, Inc.*

The Defense Contract Audit Agency (DCAA) has modified its policies in oversight of contractor billing systems, specifically in the agency’s manner in which pre-payment and post-payment reviews of contractor invoices are handled.

In its September 26, 2014 memorandum (14-PPS-017 (R)), the agency states it will utilize a risk based oversight process in selecting vouchers (e.g. invoices) on an interim basis (e.g. invoices not yet paid) for review by determining whether contractor incurred cost proposals (ICP) are high risk or low risk using revised risk assessment and voucher sampling plan templates. The memo justifies its revised approach for targeting and testing vouchers on a pre-payment basis stating the need for consistency in approach and better use of audit resources.

If recently submitted ICPs are considered high risk, field audit offices will prepare a risk determination and sampling plan, and thereafter invoices will be sampled at least annually. If contractors are deemed low-risk, no longer will DCAA be required to prepare separate risk evaluations and sampling plans. Further, using a new agency developed guide, auditors will determine the number of invoices to be selected. The agency has also developed a new pre-payment “Public Voucher Assessment Tool” that identifies minimum criteria for selecting interim invoices for review, and will serve as a documentation format for recording audit test results of selected invoices.

In a separate memo issued on September 12, 2014, DCAA advises auditors of revised procedures for audit testing of paid vouchers, because FY 2012 changes to DFARS 242.803 essentially eliminated the direct billing process under DOD contracts and replaced it with periodic audit reviews of selected vouchers. The new procedures which were implemented into DCAA’s audit program (Activity Code 11015, “Testing of Paid Vouchers”) expands audit program testing so that the paid invoice reviews represent an audit service, whereas such testing was formerly not considered an examination. The primary purpose of voucher testing is to identify unallowable costs billed under reimbursable contracts, the results of which are filtered into the results of incurred cost proposal audits.

Results of voucher testing are to be documented with a memorandum for file, but the results will be discussed with the Administrative Contracting Officer (ACO) even though no memorandum or report will be issued to the ACO.

## CBCA Denies Contractor Billed G&A on T&M Direct Travel Costs

By Darryl Walker, CPA, CFE, CGFM, Senior Director at Redstone Government Consulting, Inc.

The Civilian Board of Contract Appeals (CBCA) denied an appeal by SOS International Ltd. (SOSI) for reimbursement of G&A costs allocable to direct travel costs under a Department of Justice, Drug Enforcement Administration (DEA) IDIQ time and material task order type contract (CBCA 3678, September 26, 2014). The court agreed with the DEA's contracting officer who decided to disallow SOSI G&A allocations to the contractor billed travel costs because the solicitation and contract terms were unambiguous that G&A costs allocable to direct travel were to have been factored into the contract schedule fully burdened hourly labor rate.

SOSI's appeal arose from a DEA solicitation issued in May 2012 which required the submission of a single fully burdened hourly rate, to include "all costs associated with contract performance". Costs such as wages, management overhead, G&A expenses and profit were to comprise the proposed and negotiated direct labor for linguistic services. The solicitation also included contract line items for "exception" travel costs if required and approved by the government, with travel presumably to be reimbursed at contractor actual incurred costs (the reference to exception travel as potentially reimbursable was to differentiate it from local travel which was not reimbursable).

The contract award mirrored the RFP, and included a single fully burdened negotiated hourly rate to be applied to billed labor hours, plus an allowance for direct travel costs. Of particular note, the contract contained FAR 52.232-7, the Time and Material payment clause which expressly deems "applicable indirect costs" as an allowable part of "material" costs. Therefore, SOSI began billing travel costs with G&A costs applied, consistent with its cost accounting practices of calculating G&A rates using a total cost input base. Although the contract did not explicitly address or disallow G&A costs applied to exception travel costs the contracting officer began rejecting travel invoices with G&A applied, stating that "The G&A should be built into hour labor CLINs".

In addressing the SOSI appeal, the CBCA debated both the application of the T&M payment clause, which allows indirect costs applied to reimbursable "materials", and whether the solicitation and the subsequent contract was clear in their intent of having all G&A costs applicable to the contract included within the single labor rate. The board stated, "the only portion of the contract addressing G&A as an allowable cost is the language instructing (RFP) to propose a single rate for each" labor services CLIN.

The court therefore relied entirely on the solicitation and contract terms, where in the court's opinion, the contract was clear in its intent, that is all costs (including G&A applied to "exception" travel) were intended to be included within the labor rate, and to state otherwise would "create a patent ambiguity in the face of the contract language".

Although we (and by all indications SOSI) find the decision at odds with the T&M payment clause (a contractual clause which expressly allows G&A on travel costs), and inconsistent with SOSI's cost accounting practices which clearly did not include allocable G&A on materials as part of a direct labor rate calculation, the court relied on what was clear to them. In this case, the somewhat atypical, but solicitation/contract specific verbiage, which explicitly stated all "costs associated with contract performance" were to be included in the negotiated direct labor rate.

The decision to disallow G&A costs allocable to reimbursable "materials" which have traditionally been accepted as allowable within payment provisions (52.232-7), should remind contractors that in the face of atypical solicitation and/or contract terms (atypical with respect to the more general terms in FAR 52.232-7) contracting officers and ultimately judges will default to the literal wording of the solicitation/contract. During solicitation review, bidding process, and negotiations, contractors must gain a clear understanding of any atypical and/or cloudy solicitation terminology, otherwise risk a contract with terms and conditions which will not necessarily yield a fair and reasonable price. In the case discussed, it apparently fell on deaf ears that it was conceptually absurd to include within a fixed labor rate an indeterminable amount for G&A applicable to an indeterminable amount of "exception" travel costs. As we've stated many times, no one said that life (as a government contractor) was fair or in this case, logical.



## We Have Moved! Redstone Government Consulting, Inc. Opens New Office in Huntsville, AL



Redstone Government Consulting, Inc. (RGCI) is pleased to announce the grand opening of our new office location in Huntsville, AL. Our new location at 4240 Balmoral Drive SW is conveniently located to both Redstone Arsenal and Cummings Research Park, and offers additional office space as well as dedicated training facilities. Our growth over the past 3-years has been a direct result of our clients continued support of Redstone Government Consulting and our commitment to providing those clients best in industry and cost effective government compliance support. We wish to extend our sincere gratitude to all of our clients who have worked with our staff since the early 90s as our group grew from a small part of a public accounting firm to a new company and recognized industry leader in government compliance consulting.

Our first training class in the new facility was hosted this past week and we will be hosting additional training and an open house and ribbon cutting in the next few weeks. We look forward to seeing many of you at these upcoming events.

## Training Opportunities

### 2014 Redstone Government Consulting Sponsored Seminar Schedule

**November 20, 2014 – Cost Accounting Standards (CAS) Overview & Cost Impacts**

LIVE EVENT – Huntsville, AL – [Click Here to Register](#)

**December 4, 2014 – Cost Estimating including Cost and Price Analysis**

LIVE EVENT – Huntsville, AL – [Click Here to Register](#)

**December 16, 2014 – Government Contract Audits: Expectations for 2015**

LIVE EVENT – Huntsville, AL – **Registration Coming Soon**



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### 2014 Federal Publications Sponsored Seminar Schedule

**December 9-10, 2014 – Accounting Compliance for Government Contractors**

Las Vegas, NV

**April 7-8, 2015 – Accounting Compliance for Government Contractors**

Denver, CO

**April 7-8, 2015 – Government Contract Audits: Dealing with Auditors and Mitigating Audit Risk**

San Diego, CA

**May 5-7, 2015 – The Masters Institute in Government Contract Costs**

La Jolla, CA



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**June 2-3, 2015 – Accounting Compliance for Government Contractors**

Arlington, VA

**July 20-21, 2015 – Government Contract Audits: Dealing with Auditors and Mitigating Audit Risk**

Hilton Head Island, SC

**July 21-23, 2015 – The Masters Institute in Government Contract Costs**

Hilton Head Island, SC

**August 18-20, 2015 – The Masters Institute in Government Contract Costs**

Sterling, VA

**August 20-21, 2015 – Government Contract Audits: Dealing with Auditors and Mitigating Audit Risk**

Sterling, VA

**October 5-6, 2015 – Accounting Compliance for Government Contractors**

Arlington, VA

**Instructors:**

- Mike Steen
- Scott Butler
- Cyndi Dunn
- Asa Gilliland
- Darryl Walker
- Courtney Edmonson
- Cheryl Anderson
- Robert Eldridge

Go to [www.fedpubseminars.com](http://www.fedpubseminars.com) and click on the Government Contracts tab.

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**Commercial Item Pricing and DOD's Vision of "Fair Pricing"**

Posted by Michael Steen on Wed, Sept 3, 2014 – [Read More](#)

**DFARS Business Systems: A First-hand Perspective**

Posted by Glenn Behrends on Mon, Aug 18, 2014 – [Read More](#)

**Update: The New Contractor Purchasing System Reviews (CPSR)**

Posted by Wayne Murdock on Wed, Aug 13, 2014 – [Read More](#)

**Hand Cuffed**

Posted by Cheryl Anderson on Wed, Aug 6, 2014 – [Read More](#)

**One Client's Initial Assessment of DFARS Proposed Rule Allowing IPAs to Handle Business System Audits**

Posted by Darryl Walker on Tue, Aug 5, 2014 – [Read More](#)

**Proposed Business System Rule Changes – What Are The Concerns?**

Posted by Robert Eldridge on Mon, Aug 4, 2014 – [Read More](#)

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## Whitepapers Posted to our Website

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A Whitepaper by Wayne Murdock – [Read More](#)

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**DCAA Rejection of Incurred Cost Proposals**

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For More Whitepapers:

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### About Redstone Government Consulting, Inc.

Our Company's Mission Statement: RGCI enables contractors doing business with the U.S. government to comply with the complex and challenging procurement regulatory provisions and contract requirements by providing superior cost, pricing, accounting, and contracts administration consulting expertise to clients expeditiously, efficiently, and within customer expectations. Our consulting expertise and experience is unparalleled in understanding unique challenges of government contractors, our operating procedures are crafted and monitored to ensure rock-solid compliance, and our company's charter and implementing policies are designed to continuously meet needs of clients while fostering a long-term partnership with each client through pro-active communication with our clients

In achieving government contractor goals, all consulting services are planned and executed utilizing a quality control system to ensure client objectives and goals are fully understood; the right mix of experts with the proper experience are assigned to the requested task; clients are kept abreast of work progress; continuous communication is maintained during the engagement; work is managed and reviewed during the engagement; deliverables are consistent with and tailored to the original agreed-to scope of work, and; follow-up communication to determine the effectiveness of solutions and guidance provided by our experts.

### Specialized Training

Redstone Government Consulting, Inc. will develop and provide specialized Government contracts compliance training for client / contractor audiences. Topics on which we can provide training include estimating systems, FAR Part 31 Cost Principles, TINA and defective pricing, cost accounting system requirements, and basics of Cost Accounting Standards, just to name a few. If you have an interest in training, with educational needs specific to your company, please contact Ms. Lori Beth Moses at [lmoses@redstonegci.com](mailto:lmoses@redstonegci.com), or at 256-704-9811.



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